

**CITY OF MORGAN HILL
SPECIAL CITY COUNCIL MEETING
MINUTES – MAY 4, 2005**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Grzan, Sellers, Tate and Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk Tewes certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

CLOSED SESSIONS:

Acting City Attorney McClure announced the below listed closed session item:

1.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority: Government Code Section 54957.6

Agency Negotiators: City Manager; Human Resources Director

Employee Organization: AFSCME Local 101

Morgan Hill Community Service Officers Association

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Kennedy opened the Closed Session item to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 7:04 p.m.

CLOSED SESSION ANNOUNCEMENT

Acting City Attorney McClure announced that no reportable action was taken in closed session.

SILENT INVOCATION

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comment for items not listed on this evening's agenda.

Rosanne Macek, Morgan Hill Community Librarian, announced that Measure A passed with 72% of the vote. She stated that this measure provides some funding for the Santa Clara County Library to which Morgan Hill is a part. She stated that the success of the measure was due to the efforts of many hardworking volunteer groups. She thanked Mayor Pro Tempore Tate for co-chairing the countywide campaign. She acknowledged Bert Berson, Library Commissioner, Carol O'Hare, president of the Friends of the Library who co-chaired the local campaign group, and Vickie Reader who coordinated over 150 individuals who made phone calls to remind voters to return their ballot measures via mail. She said that the passage of the measure will result in the continuation of library services in Morgan Hill at the current level, and that the library will not have to institute some of the cutbacks previously being looked at.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy indicated that there is a speaker card from an individual wishing to address the Council under Consent Calendar item 1.

City Manager Tewes stated that it is staff's recommendation that the City Council set a date and time for a hearing on an appeal of a Measure C application by Mr. Howard Vierra. Staff is recommending that the hearing be set for Wednesday, June 8, 2005 at 7:00 p.m. He informed the Council that he has personally spoken with Bruce Tichinin, attorney for Mr. Vierra. Mr. Tichinin has agreed that this is an appropriate date and time and that he would be prepared to present written material in advance. He has spoken with Mr. McClure who will be making a presentation on the part of staff's position. He has also spoken with Kirsten Powell who has indicated that this date and time works for her as well.

Mayor Kennedy opened the floor to public comment.

Bruce Tichinin stated that he was pleased that the Council has finally set this matter for rehearing because it opens the possibility that the Council's substantive decision on the appeal would be the one required by General Plan law that would set in motion further applications for the land use approvals involved and the likely generation of profits that would eliminate Mr. Vierra's \$1.5 million claim against the City. He noted that one of the implied stipulations to the elimination of their claim is that there was a violation of due process in the initial process of the appeal. In order to assure this result, he requested City Manager Tewes recuse himself from the rehearing process, including refraining in the selection and retention of new counsel to advise the City Council. He felt that Mr. Tewes failed to demonstrate personal integrity in the exercise of his public office to recuse himself and that the Council failed to demonstrate its independence by not ordering Mr. Tewes to recuse himself. Therefore, his

claim of due process will not be satisfied. He reiterated his hope that the Council's decision, on appeal, will eliminate his (Vierra's) claim for loss profits and mute the due process issues.

No further comments were offered.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1 and 2 as follows:*

1. **SET PUBLIC HEARING REGARDING APPEAL APPLICATION, AP-03-07: WEST MAIN-VIERRA**

Action: ***Set** June 8, 2005 at 7:00 P.M. as the Date and Time to Hear the Vierra Appeal, a Request for Residential Development Control System (Measure P) Building Allocations for Fiscal Year 2005-2006. The Project is a Five Unit Single Family Residential Development, Plus One Existing Dwelling Unit, on A 4.54 Acre Parcel Located on a Westerly Extension of Via Grande and Southerly Extension of John Telfer Drive, South of West Main Avenue. (APN 773-06-009).*

2. **APPROVE CHANGE ORDER FOR TENNANT/HIGHWAY 101 SOUTHBOUND RAMPS SIGNAL INSTALLATION PROJECT**

Action: ***Approved** Change Order in the Amount of \$50,000 to Replace Existing Asbestos Cement Pipe Waterline with Ductile Iron Pipe.*

ADJOURN TO CITY COUNCIL REGULAR MEETING AGENDA

The City Council adjourned the meeting at 7:50 p.m. until the conclusion of the regular City Council/special Redevelopment Agency meeting agenda where they would reconvene to closed session.

RECONVENCE

Mayor Kennedy reconvened the meeting at 9:57 p.m.

RECONVENE TO CLOSED SESSION

Mayor Kennedy adjourned the meeting to Closed Session at 9:58 p.m.

RECONVENE

Mayor Kennedy reconvened the meeting at 10:20 pm.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that no reportable action was taken in closed session.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 10:21 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK